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State v. Bassett Respondent's Brief Dckt. 43421

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IN THE SUPREME COURT OF THE STATE OF IDAHO

| | | |
|------------------------|---|--------------------------|
| STATE OF IDAHO, |) | |
| |) | NO. 43421 |
| Plaintiff-Respondent, |) | |
| |) | Kootenai County Case No. |
| v. |) | CR-2015-1898 |
| |) | |
| RICHARD BRIAN BASSETT, |) | |
| |) | RESPONDENT'S BRIEF |
| Defendant-Appellant. |) | |
| _____ |) | |

Issue

Has Bassett failed to establish that the district court abused its discretion by imposing the mandatory minimum three-year fixed sentence upon his guilty plea to trafficking in heroin?

Bassett Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Bassett pled guilty to trafficking in heroin (two or more grams, but less than seven grams) and the district court imposed the mandatory minimum required sentence

of three years fixed. (R., pp.32-33, 37-42.) Bassett filed a notice of appeal timely from the judgment of conviction. (R., pp.43-46.)

“Mindful that [he] was sentenced to the mandatory minimum required by the statute to which he pled guilty,” Bassett nevertheless asserts his sentence is excessive in light of his substance abuse, support from family and friends, status as a first-time felon, acceptance of responsibility, and purported remorse. (Appellant’s brief, pp.1, 3-6.) Bassett has failed to establish an abuse of discretion.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

Pursuant to I.C. § 37-2732B(a)(6)(A), upon conviction for trafficking in heroin (two or more grams, but less than seven grams), the defendant “shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years.” Because the district court imposed the mandatory minimum sentence **required** by statute, it cannot be said that the court abused its discretion in doing so. The maximum prison sentence for

trafficking in heroin (two or more grams, but less than seven grams) is life in prison. I.C. § 37-2732B(a)(6)(D). The district court imposed only the mandatory minimum sentence of three years fixed, with no indeterminate time. (R., pp.37-42.) Because the district court, in its discretion, imposed only the bare minimum sentence required by law and was not authorized to impose a lesser sentence, Bassett's claim of excessiveness fails.

Conclusion

The state respectfully requests this Court to affirm Bassett's conviction and sentence.

DATED this 23rd day of February, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of February, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General